

Message Text

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ORIGIN L-03

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C O N F I D E N T I A L STATE 018111

VIENNA FOR IAEA

E.O. 11652: GDS

TAGS: IAEA, TECH, MNUC, ENRG

SUBJECT: AMENDMENT TO US/IAEA AGREEMENT FOR COOPERATION

REF: VIENNA 544

1. WE WISH TO COMMEND MISSION FOR OUTSTANDING EFFORT IN
WORKING ON AND NEGOTIATING AMENDMENT TO US/IAEA AGREEMENT
FOR COOPERATION. THE RESULTS ACHIEVED SHOW SKILL AND
INSIGHT OF MISSION AS WELL AS DEPTH OF UNDERSTANDING OF
CURRENT USG POLICY AND ANTICIPATED NON-PROLIFERATION
LEGISLATION.

2. SUBJECT TO FOLLOWING THREE MODIFICATIONS, WE CONFIRM
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THAT WE CAN SUPPORT TEXT TRANSMITTED REFTEL:

(A) WITH RESPECT TO PROPOSED ADDITION TO ARTICLE IV OF
AMENDMENT FOR COOPERATION, WE PROPOSED FOLLOWING REVISION:
"THE APPLICABLE LAWS, REGULATIONS AND LICENSE REQUIREMENTS
OF THE U.S. INCLUDE CRITERIA FOR THE ARRANGEMENTS FOR
TRANSFER AND EXPORT AND THE PERFORMANCE OF SERVICES RE-

REFERRED TO IN THE FOREGOING SENTENCE, AS SET FORTH IN THE ANNEX AND THE APPENDIX THERETO, WHICH ARE AN INTEGRAL PART OF THIS AGREEMENT. THE APPENDIX MAY BE MODIFIED BY MUTUAL CONSENT OF THE PARTIES, WITHOUT AMENDMENT OF THIS AGREEMENT." REASON: SINCE PENDING LEGISLATION REQUIRES THAT NEW CONDITIONS BE REFLECTED IN NEW OR AMENDED AGREEMENTS FOR COOPERATION, WE BELIEVE IT WOULD BE USEFUL FOR PRESENTATION TO CONGRESS FOR AGREEMENT ITSELF TO REFLECT THAT ANNEX AND APPENDIX ARE INTEGRAL PART OF AGREEMENT FOR COOPERATION. WHILE WE INITIALLY FAVORED ABILITY TO CHANGE ANNEX AND APPENDIX BY UNILATERAL U.S. WRITTEN NOTIFICATION, WE ARE NOW CONCERNED THAT ABILITY TO MAKE SUCH CHANGES WOULD BE SEEN INTERNATIONALLY AS INDICATION THAT USG INTENDS FREQUENTLY IN THE FUTURE TO CHANGE ITS CONDITIONS OF SUPPLY AND MIGHT BE SEEN BY U.S. CONGRESS AS THE WAY TO AVOID SUBMITTING FUTURE MODIFICATIONS OF CRITERIA TO THE CONGRESS WE HAVE, THEREFORE, PROPOSED FORMULA APPLYING ONLY TO APPENDIX ON PHYSICAL SECURITY LEVELS, WHERE WE BELIEVE MODIFICATION BY MUTUAL AGREEMENT WOULD BE APPROPRIATE.

(B) WITH RESPECT TO PROPOSED ADDITION TO SUBPARAGRAPH (C) OF ARTICLE V OF AGREEMENT FOR COOPERATION, WE ARE CONCERNED THAT LANGUAGE IS SOMEWHAT CONFUSING. WHILE WE CAN ACCEPT UNDERLYING CONCEPT, EVEN TRANSFERS TO AGENCY FOR OWN USE INVOLVE AGREEMENT BY THE U.S. AND CONFIDENTIAL

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IAEA PURSUANT TO COOPERATION AGREEMENT. WE, THEREFORE, REQUEST PARAGRAPH BE REDRAFTED TO READ: "IN CASES WHERE THE U.S. TRANSFERS MATERIAL, EQUIPMENT OR FACILITIES IN ACCORDANCE WITH THIS AGREEMENT FOR THE AGENCY'S OWN USE, SUCH MATERIAL, EQUIPMENT OR FACILITIES MAY BE TRANSFERRED BY THE AGENCY ONLY UPON AGREEMENT BY THE U.S." WE BELIEVE LAST SENTENCE OF PARAGRAPH (H) OF ANNEX SHOULD BE DELETED OR, AT LEAST, CONFORMED TO THIS REVISION.

(C) WITH RESPECT TO PARAGRAPH (A) OF ANNEX, WE APPRECIATE DRAFTING CLARIFICATIONS THAT HAVE OCCURRED. HOWEVER, REDRAFT DOES NOT CONTAIN IDEA THAT U.S. VERSION OF FULL SCOPE REQUIREMENT REQUIRES ACTUAL IMPLEMENTATION OF SAFEGUARDS AND NOT MERELY AGREEMENT PROVIDING FOR SAFEGUARDS. THUS, WE SUGGEST MODIFYING PARAGRAPH BEGINNING WITH WORD "UNLESS" AS FOLLOWS: "UNLESS, AT THE DATE OF TRANSFER, THE MEMBER STATE OR GROUPS OF MEMBER STATES HAS ENTERED INTO AN AGREEMENT OR AGREEMENTS WITH THE AGENCY FOR THE APPLICATION OF SAFEGUARDS AND SUCH SAFEGUARDS ARE BEING MAINTAINED AND IMPLEMENTED IN ACCORDANCE WITH THE AGENCY STATUTE AND THE AGENCY'S SAFEGUARDS SYSTEM WITH RESPECT TO ALL

NUCLEAR ACTIVITIES BEING CARRIED OUT WITHIN ITS TERRITORY, UNDER ITS JURISDICTION OR UNDER ITS CONTROL ANYWHERE. FOR THE PURPOSES OF THIS SECTION, IMPLEMENTATION OF AN AGREEMENT WITH THE AGENCY PURSUANT TO ARTICLE III (4) OF THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS SHALL BE CONSIDERED TO FULFILL THE CONDITION IN THE FOREGOING SENTENCE." WE HAVE DELETED THE WORDS "AT THAT DATE" BECAUSE THESE WORDS APPEAR REDUNDANT WITH THE WORDS "AT THE DATE OF TRANSFER" WHICH IS IN PARAGRAPH AND ALREADY CLEARLY SPECIFIES TIME FRAME FOR FULL SCOPE REQUIREMENT.

3. WE UNDERSTAND THAT PROVISIONS IN CURRENT VERSION OF AMENDMENT WERE MADE PROSPECTIVE PURSUANT TO DISCUSS-
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SIONS BETWEEN THE MISSION AND THE AGENCY. WE AGREE THAT APPLICATION OF PROVISIONS TO FUTURE PROJECT AGREEMENTS IS CONSISTENT WITH PENDING U.S. NON-PROLIFERATION LEGISLATION.

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